

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

SOUTHEAST TELEPHONE COMPANY)	
)	
COMPLAINANT)	
)	
v.)	CASE NO. 2004-00093
)	
KENTUCKY ALLTEL, INC.)	
)	
DEFENDANT)	

O R D E R

On March 19, 2004, SouthEast Telephone, Inc. (“SouthEast”) filed, in Case No. 2003-00115,¹ a pleading styled “SouthEast Telephone’s Motion to Compel.” In it SouthEast alleged that Kentucky ALLTEL, Inc. (“ALLTEL”) had violated the Commission’s Orders in Case No. 2003-00115. Specifically, it alleged that ALLTEL had refused to process orders from SouthEast, despite Commission requirements that it do so. By Order dated March 23, 2004, the Commission found that, while SouthEast’s allegations warranted investigation, such investigation should take place in a formal complaint proceeding pursuant to KRS 278.260. The Commission established this case and directed ALLTEL to satisfy the matters complained of or provide written response to the allegations contained therein.

¹ Case No. 2003-00115, Petition of SouthEast Telephone, Inc. For Arbitration of Certain Terms and Conditions of the Proposed Agreement With Kentucky ALLTEL, Inc., Pursuant to the Communications Act of 1934, As Amended by the Telecommunications Act of 1996.

On April 2, 2004, ALLTEL filed with the Commission a Motion to Dismiss and Answer to Motion to Compel (“Answer”). ALLTEL moved to dismiss SouthEast’s motion claiming that SouthEast had failed to state a prima facie case. ALLTEL also stated as grounds for dismissal two issues pertaining to the interconnection agreement underlying the dispute.

The first issue is ALLTEL’s claim that the Commission no longer had subject matter jurisdiction over Case No. 2003-00115 because of the appeal of the Commission’s Orders in that case to the United States District Court for the Eastern District of Kentucky, Frankfort Division (Case No. 03-04-16), on March 30, 2004.

The second issue involves three provisions of the interconnection agreement between ALLTEL and SouthEast. ALLTEL avers that these provisions, which deal with changes of applicable law and rights of appeal, render SouthEast’s complaint baseless.

ALLTEL also alleges that the Commission’s Orders in Case No. 2003-00115 are unlawful and that the law that SouthEast claims applies to the complaint is inapplicable.

On April 5, 2004, the United States District Court for the Eastern District of Kentucky entered an Order in Case No. 03-04-16 denying ALLTEL’s motion for a temporary restraining order of the Commission’s Orders in Case No. 2003-00115. On April 22, 2004, the same Court entered an order denying ALLTEL’s motion for a preliminary injunction of the Commission’s Orders in Case No. 2003-00115.²

The Commission finds that, in the wake of orders of the United States District Court denying ALLTEL’s motions for a temporary restraining order and preliminary injunction, its own Orders continue in full force and effect pursuant to KRS 278.390.

² Copies of these Orders are attached hereto as Appendix A.

Consequently, ALLTEL should file an amended response to the factual allegations made by SouthEast.

IT IS THEREFORE ORDERED that:

1. Within 10 days of the date of this Order, ALLTEL shall file an amended answer to SouthEast's factual allegations herein, and shall specifically answer the following:

a. Is ALLTEL complying with all Commission Orders entered in Case No. 2003-00115?

b. Is ALLTEL fulfilling all orders for service submitted by SouthEast?

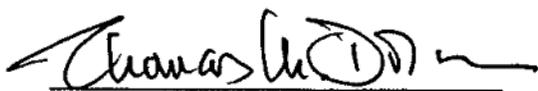
2. ALLTEL's amended answer shall be verified in form.

3. ALLTEL's Motion to Dismiss is denied.

Done at Frankfort, Kentucky, this 29th day of April, 2004.

By the Commission

ATTEST:


Executive Director

APPENDIX A

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 2004-00093 DATED April 29, 2004

(See document named "200400093_04292004apx.pdf" for Appendix A.)